7 did not reflect the invention's originally claimed embodiments wherein six or seven cards are dealt to each participant. Accordingly, the specification has also been amended as set forth above to include the corresponding reference numerals. No new matter has been added to the application.

No Claims are Obvious Under 35 U.S.C. § 103(a)

Claims 1-5, 7-11, 13-20, 22-23, and 26-27

The Office Action asserts that Applicant's invention is "conventional Asian or Pai Gow poker as shown in Breeding... The only difference is how the players are declared the winner." The Office Action then attempts to explain that one of ordinary skill in the art would be able to change the winning scheme of Breeding to produce the present invention without being inventive. Applicant submits that one of ordinary skill in the art would not develop the present invention from the disclosure present in Breeding, and thus respectfully traverses.

For the rejections made in Office Action to be valid, the initial assumption that Applicant's invention is the same game as described in Breeding,

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i.e. "conventional Asian or Pai Gow poker," must hold. Upon comparison of the Breeding disclosure and the claimed invention, it is clear that the game of the present invention as claimed is distinct from the games disclosed by Breeding.

In Breeding, all players are dealt 7 cards and simultaneously play all cards dealt. In claim one of the Application, it is clear that players can be dealt any number of cards between 3 and 7. Breeding is a very narrow disclosure that does not allow for any leeway in the amount of cards dealt.

Furthermore, the scoring between the two games is also distinct. Breeding only discloses a game based on poker scoring. The present invention is in no way limited to such scoring as the specification makes clear that the invention can utilize poker-based scoring, or scoring based on adding the values of the cards.

Finally, Breeding discloses the traditional game of Pai Gow poker wherein each of the game's players are dealt seven cards. The seven cards are then divided by each player into two hands, one having 5 and the other 2 cards. Breeding does not teach or suggest any variation of this dealing and playing methodology. In

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fact, this methodology is necessitated due to the poker-based scoring method (i.e., one five card poker hand must be generated from the seven dealt cards) used in the game. The claimed invention does not have the players dividing the dealt cards into separate hands of five and two. In the Applicant's invention as claimed, the requirement is that the player split at least three of their cards into two half-hands. As seen in the specification, a half-hand is comprised of essentially equal amount of cards (3 and 3, 2 and 2, 2 and 3, or 1 and 2). Thus, nowhere does Breeding disclose, teach, or suggest to one of ordinary skill in the art a card based game method whereby two half-hands are created by each player and the dealer from an initial deal comprising 3 to 7 cards.

Furthermore, the Applicant notes that the Office Action admits the winning scheme employed in the method of the present claimed invention is different from the prior art. The Office Action nonetheless argues that this distinction does not make the invention patentable because it would have been obvious for one skilled in the art to change the winning scheme employed in Breeding to achieve the winning scheme of Applicant's invention. Even if the games of Breeding and applicant

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were the same aside from the winning scheme, which they clearly are not, the winning scheme of the present invention is not obvious in light of Breeding.

In support of this argument, the Office Action first asserts that choosing a winning scheme is within the common knowledge of one skilled in the art. Again, the Applicant makes note of the fact that the skilled artisan is a dealer, not an inventor. There is no motivation for a dealer to change existing games, and there is specifically no motivation pointed out in the Office Action to modify the method of Breeding to achieve the present invention. Furthermore, there is no suggestion supplied by any of the cited art for a dealer of the game disclosed by Breeding to change the method by which the winners are determined to the method as presently claimed.

Second, the Office Action asserts, "that choosing a winning scheme does not change the game. It only changes the strategy and odds". The Applicant cannot think of a clearer indication that the game method of the present invention is distinct from the Breeding disclosure other than that the two methods require different strategies for successful playing. A game method's objective, or "winning scheme," alters the

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play of the game so fundamentally that the players change the method by which they play their cards because they wish to achieve this different objective. The differences between the claimed invention and the prior art are not reflective of obvious modifications upon the prior art but rather indicative of a completely new game having a new set of rules, procedures, and goals. This is clearly the definition of a new game.

Third and finally, the Office Action asserts that "Breeding give [sic] a winning scheme according to a preferred embodiment," and thus concludes that Breeding may have contemplated other winning schemes which could be applied to the method disclosed in the patent. The Applicant respectfully submits that it is irrelevant what other winning schemes Breeding may or may not have *contemplated* at the time of his disclosure. It is only relevant what Breeding has *disclosed* because it is settled precedent that the secret use of an invention by an inventor does not bar patentability for a future inventor. *See W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983). Just because Breeding may have contemplated the use of other winning schemes, it does not follow that the

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winning scheme employed in the present invention as claimed is obvious. The fact remains that Breeding does not disclose the present invention's winning scheme, and possible secret knowledge of the Applicant's winning scheme does not preclude patentability of the present application by rendering the claimed invention obvious.

The Secondary References are Not Combinable

Applicant respectfully submits that all rejections based on Breeding in view of Malek, Banyai, and Lo must be withdrawn because the addition of these secondary references does not cure the deficiencies of Breeding described above. As demonstrated, the independent claims 1 and 22 are allowable because the prior art does not teach or suggest a game method comprising dealing 3 to 7 cards and then splitting those cards into high and low half-hands, or teach or suggest a game apparatus comprising dealer and player areas each having high half-hand and low half-hand regions. The addition of the secondary references to the dependent claims does not remedy the above-described inadequacies of Breeding. Furthermore, Applicant respectfully submits that the Malek reference is not properly

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combinable with Breeding.

Claims 6 and 12

Independent reconsideration is requested for claims 6 and 12. It is respectfully submitted that Malek and Breeding are not combinable because they are very distinct games. As discussed above, Breeding is simply a traditional Pai Gow poker game with hands of 2 and 5 cards made from an initial deal of 7 cards. The Office Action asserts that Malek teaches paying for an extra card to better one's hand and thus would lead one of ordinary skill in the art to modify the method of Breeding to achieve the claimed invention. Malek is a combination 21 and baccarat game (two game types in which drawing additional cards is commonplace), and not a Pai Gow poker where no card drawing is not part of the game at all. There is no teaching or suggestion in either disclosure that elements employed in the Malek game could be combined into the method disclosed by Breeding.

Furthermore, it is noted that in light of the above comments with respect to claim 1, even if the two references could be properly combined the Applicant's claimed invention would not be rendered obvious. The

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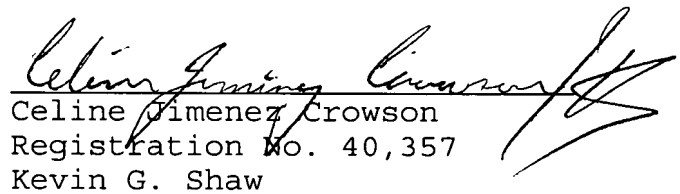
method of dealing 3 to 7 cards, and then producing two half-hands from the cards dealt is in no way taught or suggested by either reference.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the rejections set forth in the Office Action be withdrawn. Claims 1-27 are allowable over the art of record, and the application is submitted to be in condition for allowance. Favorable reconsideration of this application and a timely Notice of Allowance are respectfully requested.

Respectfully submitted,

By: 

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